IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 13TH NOVEMBER 2006 / 22ND KARTHIKA 1928

Crl.MC.No. 4909 of 2003(Y)

CC.299/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT, ADOOR

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PETITIONER: 4TH ACCUSED

K.R.REJANI, RATHEESH BHAVAN,
PERUMTHURUTHU P.O., KOLLARA, KOTTAYAM

BY ADV. SRI.K.SASIKUMAR
ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR

RESPONDENTS: STATE AND COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY
DIRECTOR OF PUBLIC PROSECUTIONS,
HIGH COURT OF KERALA, ERNAKULAM.

2. KANNAYYA CHETTIYAR, KOCHU KARIMPANA
MUZHIYIL, CHANDANAPALLY, ANGADICKAL, ADOOR,
PATHANAMTHITTA DISTRICT

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB
ADV. SRI.S.MUHAMMED HANEEFF

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/11/2006, ALONG WITH CR.M.C NO. 62 OF 2004 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU,J

Crl.M.C.Nos. 4909 OF 2003 AND 62 OF 2004

Dated this the 13th day of November,2006

The petitioners are accused 1 and 3 in C.C.No. 299/03 in Court of Judicial First Class Magistrate, Adoor, with respect to the offence under Sections 336 and 304-A I.P.C. On the allegation that on account of the negligence of the petitioners and the other accused, the son of the complainant, who underwent an operation for appendicitis died. It is the case of the Petitioners / the accused, that Act of taking cognizance of the complainant by the court below is in violation of the ratio of the decision of the Supreme Court, in **Jacob Mathew Vs State of Punjab, 2005 (3) KLT 965 .** It is omitted that the patient died on 20.8.2000 at the Medical College Hospital, Kottayam, wherein he was admitted on 10.8.2000. The operation has conducted on 9.8.2000. The petitioners produced the post-mortem certificate. The cause of death based on the post-mortem findings and the results of laboratory examinations, is that the death was caused due to Septicaemia vide annexure A3. It is submitted that the matter was initially investigated by the police. The police filed a report vide annexure A4. The petitioner Crl.M.C. 4909 is the first accused/ Staff nurse. It was allegedly submitted that the injection given to the

patient was deteriorating. She was only the duty staff nurse inside the operation theatre and not the duty nurse wherein the diseased was admitted subsequent to the operation.

I find that the contention of the counsel for the petitioner / the accused is mainly based on the decision of the Supreme Court in Jacob Mathew's case (ob.cit) at the time when the court took cognizance, the above decision was not available as the order of the court is dated 02.05.03.

In the circumstances the order of court dated 2.5.2003 issue summons to the accused is herewith quashed. The court below is directed to reconsider the matter in the light of the decision in Jacob Mathew's case (ob.cit). The petitioners in the private complaint appear before the court below on 04.12.2006.

K.R.UDAYABHANU, JUDGE

dvs